

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

MATTHEW J. WASHINGTON,

Plaintiff and Appellant,

v.

DAVID P. PYGEORGE et al.,

Defendants and Respondents.

A122672

(Contra Costa County
Super. Ct. No. C0702773)

Matthew Washington appeals from a judgment of dismissal entered after the superior court sustained a demurrer to his complaint without leave to amend and awarded attorney fees to defendants David Pygeorge and Barbara Bender. Because Washington has not demonstrated any error, we affirm.

BACKGROUND

This case arises from a dispute over a distribution from the revocable trust of James L. King, who died in 2006. Pygeorge is the successor trustee, and for some period of time Bender was his lawyer. Washington was King's caretaker for seven years, and was the beneficiary of a \$40,000 bequest under the trust.

Washington sued Pygeorge and Bender in Alameda County, alleging they wrongfully withheld money due to him under the trust and failed to provide him with a copy of the trust instrument. Washington also alleged that Pygeorge failed to pay him for

work he performed at King's residence and sold various items of Washington's personal property.

Bender moved for a change of venue on the ground that none of the defendants reside in Alameda County. The motion was granted, and the action was ordered transferred to Contra Costa County Superior Court. However, before the transfer was completed the parties executed a settlement agreement pursuant to which Washington received payment from the trust of \$35,872.43 and, in exchange, dismissed his complaint with prejudice and released any and all further claims against defendants. Washington was represented by counsel and was advised of the consequences of the settlement agreement.

Less than two months later, Washington filed a second complaint against Pygeorge and Bender in Alameda County. This complaint, as amended, sought to void the settlement agreement, which it described as "improperly negotiated."

Bender and Pygeorge both moved, successfully, to transfer venue to Contra Costa County Superior Court. They then demurred to the amended complaint. Following briefing and oral argument, the court adopted its tentative ruling as follows: "Defendant David Pygeorge's general demurrer to the Amended Complaint is sustained without leave to amend. CCP 430.10 (e). Attached to the Amended Complaint as Exhibit E is a copy of the Settlement Agreement and Mutual Release entered into by the parties on May 23, 2007, in action RG06-293026. The Amended Complaint fails to state facts to support grounds for rescission of that Settlement Agreement—that the Settlement Agreement and Mutual Release was procured by fraud, undue influence, duress or mistake."

Defendants moved to recover their attorney fees pursuant to an attorney fees provision in the settlement agreement. The court granted the motions and awarded Bender and Pygeorge fees and costs in the amounts of \$7,440 and \$9,682, respectively. The entire action was dismissed with prejudice.

Washington timely appealed from the judgment of dismissal.

DISCUSSION

Washington clarified at oral argument that his principal argument is directed at the trial court's award of attorney fees and costs. The record, however, gives no indication that the award was based on a legal error or an abuse of the court's discretion. This court has given careful and thorough consideration to Washington's other written contentions and to the record on appeal. Having done so, we are compelled to agree with defendants that the absence of coherent legal argument in Washington's briefs precludes any meaningful appellate review in this case. Washington's opening and reply briefs present a hodgepodge of claims of error by both the Alameda and Contra Costa County Superior Courts, which appear to relate, *inter alia*, to the change of venue orders, a motion to strike defendants' costs memoranda, a motion for judicial notice, the validity of the trust instrument, the alleged exclusion of relevant information from a case management conference and the hearing on the demurrer, the court's alleged failure to order respondents to provide Washington with a copy of the trust instrument, the validity of the settlement agreement, and an alleged denial of Washington's right to file a motion to set aside the judgment and for a new trial. None of these disparate contentions are supported with citation to pertinent legal authority or intelligible legal argument; equally lacking is any citation to the record of the trial court proceedings. These defects are fatal to Washington's appeal.

“[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) “As a general rule, ‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.’ [Citations.] It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. [Citation.] If no citation ‘is furnished on a particular point, the court may treat it as waived.’ ”

(*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) Our Supreme Court has made it clear that pro per litigants are held to the same standards as those represented by trained legal counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Faced with the level of inadequacy apparent in Washington's briefing, we find this case to be one that requires application of the waiver rule. We therefore deem his assertions on appeal to have been abandoned. (*Guthrey v. State of California, supra*, 63 Cal.App.4th at p. 1115; see also *Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482; *Strutt v. Ontario Savings & Loan Assn.* (1972) 28 Cal.App.3d 866, 873; see generally 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, pp. 769-770; § 711, pp. 780-781.) In light of this resolution, the request for judicial notice attached to Washington's reply brief is denied as moot.

DISPOSITION

The judgment and orders of the superior court are affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.